Mr. Koek has drawn my attention to this section as it stood in the Ordinance as it was passed in 1934, when the words "or has practised his profession" appeared after the mention of reading in chambers, and he suggested that as the petitioner must have been a barrister before he practised his profession so it was intended that he should be a barrister before he read in chambers. If this suggestion is correct the repeal of the words "or has practised his profession" does not alter the meaning of the words which have not been repealed (see *Attorney-General v. Lamplough*[1], per Kelly C. B. at p. 223 and Bramwell L. J. at 227) so "been a pupil or read in the chambers" would continue to apply to a barrister and not to a law student.

But I find some difficulty in applying the *ejusdem generis* rule to these two phrases. What is contemplated is that the petitioner should have some practical experience of the work of his profession, and that experience could be obtained before his call to the Bar, though the experience would probably be more valuable in the case of a fully qualified barrister. The practical experience could, under the Ordinance in its unamended form, be obtained in either of two ways, by reading in chambers or by actual practice, and I see nothing in the section to require me to hold that the pupil who reads in chambers must be already a barrister, though that may be what the draftsman of the section contemplated whether it was his deliberate intention or not.

The word 'pupil' was not inserted in the section to lend support to Mr. Cobbett's interpretation of the clause. That word was introduced to provide for the case of Irish Barristers as it was most unusual, and I think is still unusual, for Irish Barristers to have chambers. The law Library took, and still takes, the place of chambers in Ireland.

I was referred to two other cases in which the petitioners had read in chambers in England before their call to the English Bar and in which this was taken into consideration in allowing six months instruction in the office of a local advocate to suffice. Although the point I have had to consider does not appear to have been raised in those cases, I am not satisfied that what was done in them was wrong, and I therefore hold that the petitioner having read in the chambers of a member of the English Bar for twelve months prior to his call to that Bar, is eligible to be admitted to the Colony Bar after he has received instruction for six months in the office in the Colony of a practising advocate and solicitor of not less than seven years' standing in the Colony, provided he complies with the other provisions of the Ordinance.

Order accordingly.

POH YEE CHOI & ANOTHER v. SHUN FAH & CO.; PAYMASTER, MALAYA COMMAND (GARNISHEE).

[Orig. Civil Juris. (McElwaine, C.J.) Sept. 16, 1941]

Procedure—Garnishee Notice served on officer of His Majesty—Jurisdiction—Rules of Supreme Court Order XLI r. 4 (2)—Courts Ordinance S. 11.

Public moneys in the hands of the Paymaster, Malaya Command, cannot be garnished, Section 11 of the Courts Ordinance gives the Court no jurisdiction to order the attachment of such moneys and Order XLI and Order XLIII cannot be construed as conferring any such power.

Cases referred to:—

(1) *Henley v. Mayor of Lyme* 5 Bing. 107.
(2) *Macbeath v. Haldimand* 1 T.R. 172.
(3) *Palmer v. Hutchinson* 6 A.C. 619.
(4) *Dunn v. Macdonald* (1897) 1 Q.B. 555.
(5) *Frith v. The Queen* 7 Exch. 365.
(6) *Doss v. Secretary of State* 19 Eq. 509.
(7) *Municipal Commission of Sydney v. Bull* (1909) 1 K.B. 7.
(8) *Macleod v. Attorney General of New South Wales* (1891) A.C. 455.

SUMMONS.

Dr. Withers-Payne for applicants.

S. C. Liew for respondents.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

McElwaine, C.J.—The plaintiffs having recovered judgment against the defendants, served a garnishee notice upon the Paymaster, Malaya Command who now applies to have the notice set aside.

The garnishee is an officer of His Majesty holding money the property of His Majesty in right of the Government or of a Department of the Government of the United Kingdom, and I have no doubt that he is a public officer: *Henley v. Mayor of Lyme*[1]. If the garnishee were a public officer of this Colony, money held by him in that capacity could not be attached without the written consent of the Attorney-General or other officer specified in Order XLI., r. 4 (2) of the Rules of the Supreme Court, but the Command Paymaster is not a public officer within the meaning of this Rule.

The Attorney-General has not given his sanction to the present attachment, and in my opinion he could not give it, at any rate, not without specific authority from His Majesty in His Government in the United Kingdom, to give such sanction.

There is no suggestion that the Command Paymaster in his private and personal capacity is indebted to anyone. The plaintiffs are described in the Writ of Summons as sub-contractors and the defendants as general contractors, and the claim is for money due by the defendants for work done at Gillman Barracks and another place. These are military works and I have no doubt that if Shun Fah & Co. are owed any money the money is owed under a contract made by the Military authorities on behalf of the War Office or the Crown in the Government of the United Kingdom, and that no action would lie against an individual so long as he had authority to contract and did not contract in his personal capacity; *Macbeath v. Haldimand*[2]; *Palmer v. Hutchinson*[3]; and the public officer who signed the contract could not be sued as agent of the Crown; *Dunn v. Macdonald*[4].

Any claim which Shun Fah & Company may have to payment could only be enforced by a petition of right and the plaintiffs cannot be in a stronger position as against the Crown with whom they have no contract at all.

No fiat could be given under s. 21 of the Crown Suits Ordinance because such proceedings would not be against the Crown in right of the Colony because the debt is not a debt due by the Colony and the judgment would not be satisfied out of the Colony revenue; *Frith v. The Queen*[5]; *Doss v. Secretary of State for India in Council*[6]. An action against the Crown in right of the United Kingdom would not lie in the Courts of the Colony unless the Crown in that right submitted to the jurisdiction.

For purposes of litigation the Crown is often not one and indivisible as may be seen in actions between the Crown in right of a Canadian Province and the Crown in right of the Dominion. So a tax due to the Crown in one part of His Majesty's Dominions cannot be sued for in another part; *Municipal Commission of Sydney v. Bull*[7]. This distinction between the different capacities of the Crown is touched on in the Workmen's Compensation Ordinance, s. 2, where it is enacted that a person is not a workman within the meaning of the Ordinance who is "in the civil employment of His Majesty otherwise than in His Government of the Colony."

In the notes to Order XLV., r. 1 of the Rules of the English Supreme Court is a quotation from *Robertson's* "Civil Proceedings against the Crown": "Garnishee orders nisi against Government Departments have from time to time been discharged with costs, as in *Higgins v. Bussy, Broadbent v. Sanders,* and *Bennett v. Taverner*". None of these cases is reported, but I have no difficulty in reaching the same conclusion without their aid.

Sect. 11 of the Courts Ordinance gives the Court no jurisdiction to order the attachment of this money, and if Orders XLI., and XLIII., conferred such power they would be *ultra vires,* because rules made under s. 88 of the Courts Ordinance must be confined to regulating matters which the Court can do.

If Order XLI., r. 4 were capable of having two interpretations, one *intra vires* and the other *ultra vires,* I think the principle enunciated by Lord Halsbury in *MacLeod v. Attorney-General of New South Wales*[8] should be applied and the Rules Committee presumed to have made rules which were within their powers. The *intra vires* construction should be accepted and the *ultra vires* rejected.

The garnishee notice is set aside with costs.

Order accordingly.

CHING CHONG KIAT vs. THE ASIATIC PETROLEUM CO. (S.S.) LTD.

[Orig. Civil Juris. (Aitken, J.) August, 11, 1941]

Retiring Fund Contributions.

The plaintiff was a contributor to a Retiring Fund instituted by the defendant company and the plaintiff signed an application form applying to be admitted as a contributor to the Fund and agreeing to be bound by the provision of the Trust Deed relating to the same and by the rules of the Fund or other rules which might thereafter be in force.

One of the rules provided that the trustees of the Fund could at any time exercise their discretion under Rule 17 of the rules and pay out to the plaintiff the full amount standing to his credit in the books of the Fund without waiting for the expiration of 20 years from the date of the plaintiff joining the defendants' service; which period was the normal time when the amount standing to the plaintiff's credit in the Fund might be paid out to him.

Held, that the plaintiff was bound by the rules of the Fund especially Rule 23 and that the plaintiff had no right to immediate payment; the trustees having exercised the discretion given to them by the rules in refusing to pay the money out to him.